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Nexstar Broadcasting, Inc. d/b/a KOIN-TV and National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO. Case 19-CA-240187

January 14, 2021

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On August 27, 2020, Administrative Law Judge Amita Baman Tracy issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The Charging Party filed cross-exceptions and a supporting brief, and Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the judge's recommended Order as modified and set forth in full below.²

AMENDED CONCLUSIONS OF LAW

Substitute the following for the judge's Conclusion of Law 3.

¹ We have amended the judge's conclusions of law consistent with her findings.

² We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and we shall substitute a new notice to conform to the Order as modified.

We will also modify the recommended Order in the following respect. While the remedy section of the judge's decision states that the Respondent "is ordered to provide" the requested information it unlawfully withheld, her recommended Order would permit the Respondent to either furnish the requested information or engage in accommodative bargaining. Accommodative bargaining is required only if the respondent has established a legitimate and substantial confidentiality interest, however, see *Pennsylvania Power Co.*, 301 NLRB 1104, 1105-1106 (1991), and the Respondent failed to do so. The judge correctly noted that any claim of confidentiality was undermined by the Respondent's assertion that its proposed dues check-off processing cost provision is contained in collective-bargaining agreements it negotiated with other NABET locals and by the absence of any record evidence that these agreements are treated by the Respondent as confidential. Accordingly, we shall modify the recommended Order to require the Respondent to furnish the information, removing the accommodative bargaining alternative.

We deny the Charging Party's request for various extraordinary remedies, as there has been no showing that the remedies the Charging Party

"Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with information requested since December 18, 2018, which was necessary for and relevant to the Union's performance of its duties as the collective-bargaining representative of the unit employees."

ORDER

The National Labor Relations Board orders that the Respondent, Nexstar Broadcasting, Inc., d/b/a KOIN-TV, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO (Union) by failing and refusing to furnish it with requested information that is necessary for and relevant to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information it requested on December 18, 2018.

(b) Post at its Portland, Oregon facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19,

requests are warranted. We note, however, that this case marks the fourth time the Respondent has been found to have violated the Act in less than two years. See *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 68 (2021) (unlawful discipline of employee and refusal to provide information regarding discipline); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61 (2020) (unilateral change in employees' terms and conditions of employment); *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 367 NLRB No. 117 (2019) (unlawful delay in providing and refusal to provide information to union during collective bargaining). Although we do not order extraordinary remedies at this time, we will be forced to consider further appropriate remedies if this pattern of unlawful conduct persists.

³ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 18, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 14, 2021

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO (Union), by failing and refusing to furnish it with requested information that is necessary for and relevant to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on December 18, 2018.

NEXSTAR BROADCASTING, INC. D/B/A KOIN-TV

The Board's decision can be found at www.nlr.gov/case/19-CA-240187 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Sarah C. Ingebritsen, Esq., for the General Counsel.
Charles W. Pautsch, Esq., for Respondent.
Anne I. Yen, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried based on a joint motion and stipulation of facts I approved.

The National Association of Broadcast Employees & Technicians (NABET), the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO (the Union or the Charging Party) filed the original charge on April 24, 2019. The General Counsel issued the complaint on November 25, 2019. Nexstar Broadcasting, Inc. d/b/a KOIN-TV (Respondent) filed a timely answer denying all material charges.

The complaint alleges Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide the Union with requested information relevant and necessary for the Union to discharge its duties. Specifically, Respondent refused to provide the Union with information related to its proposal during negotiations for a successor collective-bargaining agreement on reimbursement for dues checkoff processing costs.

On the entire record, and after considering the briefs filed by the General Counsel, Respondent, and Charging Party,¹ I make the following, relying on the parties' stipulation of facts.

FINDINGS OF FACTS

I. JURISDICTION

At all material times, Respondent, an Oregon corporation with an office and place of business in Portland, Oregon, operates a television station (the facility).² During the 12-month period ending December 31, 2018, Respondent derived gross revenues in excess of \$100,000, and purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of Oregon. The parties admit and I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is

a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent and the Union Bargain a Successor Agreement to the Expired Collective-Bargaining Agreement

At all material times until January 17, 2017, the Union has been the exclusive collective-bargaining representative of the Units³ employed by Media General KOIN-TV and, during that time, recognized as such representative by Media General KOIN-TV. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was in effect from July 29, 2015, to August 18, 2017, with the last extension having expired on September 8, 2017 (expired CBA) (Exh. D). The parties stipulated that based upon specific facts as well as Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the Units.

At all material times, Respondent and the Union were engaged in or were preparing to engage in bargaining for a successor agreement to the expired CBA. Respondent and the Union began bargaining for a successor agreement on June 21, 2017, where Respondent proposed to delete the dues checkoff clause, found at Article 3.1 of the expired CBA. Respondent and the Union met for a bargaining session on about December 14, 2018. During this session, Respondent proposed that the Union pay an offset of \$10 per member per month to cover Respondent's payroll processing of dues checkoff costs, and Respondent, by Vice President-General Manager Patrick Nevin (Nevin),⁴ stated that Respondent had a practice of charging other unions set dollar amounts to cover dues checkoff costs in their respective collective-bargaining agreements.

B. Timeline of Events Regarding the Union's Information Request

Although the Union did not provide a counterproposal to the dues checkoff processing costs between December 14, 2018 and April 23, 2019,⁵ it did request information from Respondent related to its December 14, 2018 proposal.⁶ On December 18, 2018, by emailed letter, Union President Carrie Biggs-Adams

¹ Abbreviations used in this decision are as follows: "Exh." for stipulated record exhibits; "GC Br." for the General Counsel's brief; "CP Br." for the Charging Party's brief; and "R. Br." for Respondent's brief.

² On or about January 17, 2017, Respondent purchased the business of LIN Television Corporation, a Media General Company, d/b/a KOIN-TV (Media General KOIN-TV), and since then has continued to operate the business of Media General KOIN-TV in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Media General KOIN-TV. Respondent has continued as the employing entity and is a successor to Media General KOIN-TV.

³ Within the meaning of Sec. 9(b) of the Act, the following description of employees, of which there are approximately 45, comprise bargaining units (the Units) for the purposes of collective bargaining:

The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals,

guards and supervisors as defined in the Act, and all other employees of KOIN-TV.

The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (aka "performer"), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

⁴ The parties stipulated, and I find that Vice President-General Manager Patrick Nevin (Nevin) is a supervisor of Respondent within the meaning of Sec. 2(11) of the Act and/or agent of Respondent within the meaning of Sec. 2(13) of the Act.

⁵ All dates hereinafter are in 2019, unless otherwise noted.

⁶ This proposal states, "Union will reimburse the company \$10 per employee on a monthly basis for services rendered by the company for dues checkoff practice" (Exh. E).

(Biggs-Adams) requested information from Respondent related to its proposal for dues checkoff processing costs. In this letter, the Union requested the following information:

1. A list of specific contracts, with broadcast call letters, union name and local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Respondent for dues checkoff practice.
2. The actual cost to Respondent for the dues checkoff practice at each of the aforementioned broadcast stations, spelling out the costs and stations.
3. The actual current cost to Respondent for dues checkoff processing at Respondent. Please itemize the costs.

(Exh. E.) The Union requested the above-listed information since Respondent contended during bargaining that it has a practice of charging unions the amount of \$10 per employee on a monthly basis in its other union-represented locations (Exh. E). The Union requested the response by January 2 to have enough time to review this information prior to the next scheduled bargaining sessions of January 24 and 25 (Exh. E).

On January 3, by emailed letter, Nevin responded to the Union's December 18, 2018 information request. Respondent failed to provide the requested information detailed in items 1 and 2, and provided a general, cursory response to the requested information detailed in item 3 (Exh. F). Respondent replied that items 1 and 2 of the requested information was not relevant and necessary as it called for information outside the bargaining unit, did not involve the terms and conditions of employment of bargaining unit employees, and sought proprietary confidential information (Exh. F). As for item 3, Respondent opined that it spends 4 to 5 hours per pay period assembling and distributing dues check off processing information (Exh. F). Respondent did not offer any accommodation for items 1 and 2.

C. Bargaining Sessions Between Respondent and the Union Concerning Dues Checkoff Processing

On January 24, the parties resumed bargaining for the successor agreement to the expired CBA. During this bargaining session, Respondent's negotiators informed Biggs-Adams that several other NABET-represented bargaining units agreed to a \$50 per month fee to process dues deduction.

On April 23, Respondent revised its December 18, 2018 dues checkoff processing proposal.⁷ Respondent reiterated that other NABET locals had agreed to similar processing fees in other locations. Respondent's negotiator Business Administrator Casey Wenger (Wenger)⁸ spoke to the Union about the time it takes him to process payroll, including dues checkoff, due to the varying hours, pay, other cash compensation and the variability of dues amounts monthly based on gross compensation percentages.

During bargaining sessions held on June 27 and October 7, the Union reiterated its December 18, 2018, request for information.

Wenger reiterated that he spent approximately 5 hours per pay period to process payroll, including the dues checkoff, and that NABET locals agreed to the \$50 processing fee in at least two other locations. These relevant collective-bargaining agreements, as requested in item 1 of the December 18, 2018, information request, were never provided to the Union. The Union informed Respondent that after conducting its own research, it found only one location in which a NABET local agreed to a dues checkoff processing fee; the Union also explained why that NABET local's situation differed from the situation involving the Union and Respondent, including the fact that the dues checkoff processing fee at that local was contingent on the bank being unable to process dues checkoff via automatic debit.

On August 2, Respondent unilaterally discontinued dues checkoff. As of the date of the stipulated facts, Respondent and the Union have not reached a successor agreement to the expired CBA.

Issue Presented

The parties stipulated that this case presents the following issue:

Whether the information requested by the Union on December 18, 2018 was relevant and necessary for the Union to discharge its duties as the collective-bargaining representative of Respondent's employees in the Units and, if so, whether Respondent's failure and/or refusal to fully respond to that information request since on or about January 3 violated Section 8(a)(1) and (5) of the Act.

Discussion

The General Counsel argues that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union information it requested in connection to bargaining a successor agreement to the expired CBA on behalf of employees in the Units. Specifically, the requested information affects the Union's ability as to how to evaluate Respondent's proposal regarding dues checkoff processing as well as how to formulate counterproposals. The General Counsel argues that Respondent's initial proposal to the Union regarding the dues checkoff process "opened the door" as to the relevance of Respondent's similar process with other locals as well as the related collective-bargaining agreements. This information affects the Union's ability to bargain. The General Counsel further argues that Respondent's generalized response to the information requested is an insufficient basis on which to determine the actual costs incurred by Respondent or how Respondent's proposal should be evaluated. Moreover, according to the General Counsel, Respondent's claim of proprietary and confidential information fails as Respondent justified its contract proposal with the claim that other locals have agreed to such terms. Finally, it is argued,

will pay the Company fifty dollars (\$50.00) per month for the processing of dues.

⁷ The April 23 proposal offered by Respondent states, in relevant part:

Section 3.1 The Company shall make a check-off of union dues from each paycheck provided that the Company shall receive from the employee concerned a written assignment in the form attached hereto as Exhibit A. The Company assumes no financial obligation arising out of the provisions of this article. The Union

⁸ The parties stipulated, and I find that Business Administrator Casey Wenger (Wenger) is a supervisor of Respondent within the meaning of Sec. 2(11) of the Act and/or agent of Respondent within the meaning of Sec. 2(13) of the Act.

Respondent failed to offer any accommodations for information claimed to be confidential.⁹

Respondent argues that the Union failed to prove relevance regarding items 1 and 2 (R Br. at 12–16). Furthermore, Respondent argues that it provided the information sought in item 3 (R Br. at 16–18).

Legal Standard

Each party to a bargaining relationship is required by Section 8(a)(5) of the Act to bargain in good faith. An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations as well as administration of the contract. In addition, an employer is required to furnish the union representing its employees with information that is relevant to the union in the performance of its collective-bargaining duties. *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

Generally, a union's request for information pertaining to employees in the bargaining unit is presumptively relevant and an employer must provide the information. *CVS Albany, LLC*, 364 NLRB No. 122, slip op. at 2 (2016). However, where the information requested concerns non-unit employees, the union bears the burden of establishing relevancy. *Disneyland Park*, 350 NLRB 1256 (2007); *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997). A union satisfies its burden to do so, if it demonstrates either "a reasonable belief, supported by objective evidence, that the requested information is relevant,"¹⁰ or "a 'probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'"¹¹ The required showing is subject to a liberal, "discovery-type standard" and is not an exceptionally heavy one. *DirectSat USA, LLC*, 366 NLRB No. 40, slip op. 1, fn. 2 (2018). "The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." *Disneyland Park*, supra at 1258, fn. 5 (2007). The determination of relevance "depends on the factual circumstances of each particular case." *San Diego Newspaper Guild, Local No. 95 v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977). Specific to the stipulated facts here, an employer's duty to bargain includes a general duty to provide information by the bargaining representative to assess claims made by the employer relevant to contract negotiations. *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006) (citing *NLRB v. Truitt Mfg. Co.*, supra at 152–153 ("Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. . . . If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. And it would certainly not be farfetched for a trier of fact to reach the

conclusion that bargaining lacks good faith when an employer mechanically repeats a claim . . . without making the slightest effort to substantiate the claim.")).

Respondent Failed to Provide Relevant and Necessary Information to the Union in the Performance of its Duties as the Collective-Bargaining Representative of Employees in the Units

Applying the foregoing standards, I find that the Union has satisfied its burden by showing that the desired information was relevant, and that it would be of use to the Union in carrying out its statutory duties and responsibilities. Again, the Union's burden is "not an exceptionally heavy one." *SBC Midwest*, 346 NLRB 62, 64 (2005). In this matter, during the parties' negotiations for a successor collective-bargaining agreement, Respondent proposed that the Union pay an offset per month for Respondent's payroll processing costs for the dues checkoff. Respondent justified its proposal by explaining that this monthly monetary amount had been agreed to by other unions. Only 4 days later, the Union requested information as to the specific contracts that contain the dues checkoff practice proposed by Respondent, along with actual costs to Respondent for dues checkoff at the other locals as well as at the facility.

Items 1 and 2 of the information request concern subjects not directly related to the bargaining unit, and thus, the Union must establish relevance. The Union established relevance by repeatedly explaining that it sought the other collective-bargaining agreements with similar provisions as proposed by Respondent to formulate its own counterproposal. Even during subsequent bargaining sessions, the Union requested this information as its own research did not match what Respondent had conveyed during the bargaining sessions. However, Respondent insisted that other NABET locals agreed to similar processes proposed by Respondent but continued to refuse to provide information requested at items 1 and 2, claiming proprietary confidential information. In this instance, the information is relevant to assist the Union in assessing the accuracy of Respondent's proposals and developing its own counterproposals. The Union's request focused directly on Respondent's bargaining proposal regarding reimbursement for dues checkoff processing. "Information is relevant under *Caldwell* only if the union is seeking 'specific information to evaluate the accuracy of the Respondent's specific claims and to respond appropriately with counterproposals.'" *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) (quoting *Caldwell*, supra at 1160).¹² Item 3 directly concerns information related to the bargaining unit, and is therefore presumptively relevant. Rather than providing specific information, Respondent provided estimates from Wenger to the Union. Again, the Union has established relevance since Respondent sought to receive a fee for processing the dues checkoff. The Union justifiably sought to learn the exact, itemized cost to

⁹ The Union concurs with the General Counsel's arguments, adding that Respondent's complaints about the time it takes to calculate employees' hours, wages, and overtime pay are irrelevant as Respondent must perform these calculations to process payroll regardless of dues checkoff.

¹⁰ *Disneyland Park*, supra at 1258.

¹¹ *Kraft Foods North America, Inc.*, 355 NLRB 753, 754 (2010) (quoting *NLRB v. Acme Industrial Co.*, supra at 437).

¹² Respondent cites to a decision issued by Administrative Law Judge (ALJ) Mara-Louise Anzalone where Respondent filed an unfair labor practice charge against the Union for refusing to provide requested information (R Br. at 14–15). 2020 WL 1156844 (March 10, 2020). However, this decision is non-binding as no exceptions were filed to the ALJ's decision. See *Colorado Symphony Assoc.*, 366 NLRB No. 122, slip op. at 1 fn. 3 (2018).

Respondent currently to process dues. Thus, the Union has proven that items 1, 2, and 3 are relevant and necessary.

Despite the Union proving relevance for the requested information, the Board is required to balance a union's need for information against any "legitimate and substantial" confidentiality interest established by the employer. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105–1106 (1991) (citing *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979)). Under those circumstances, the employer has a duty to seek to bargain toward an accommodation between the union's information needs and the employer's justified interests. *Id.* at 1105–1106. Respondent claims that it has no obligation to provide the information sought in items 1 and 2, even if the Union proves relevance, due to proprietary confidential information. It is unclear in this matter how the information requested by the Union is confidential and proprietary as Respondent claims that its proposed dues check off processing cost provision is found in other collective-bargaining agreements it negotiated with other labor organizations; there is no record evidence that these collective-bargaining agreements are actually treated by Respondent as confidential. In any event, even if Respondent had proven a "legitimate and substantial" confidentiality interest in these documents, this defense could not prevail, because Respondent failed to offer to engage in bargaining for an accommodation.

For these reasons, Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused since December 18, 2018 to list the collective-bargaining agreements, with broadcast call letters, union name and local number and copies of the current provisions with effective contract dates; the actual costs to Respondent for dues checkoff practice at each of those locals, and the actual current costs, itemized, to Respondent for dues checkoff practice at the facility; Respondent failed to offer to bargain over an accommodation to address its confidentiality concerns.

CONCLUSIONS OF LAW

1. Nexstar Broadcasting, Inc. d/b/a KOIN-TV (Respondent) is, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (Charging Party or the Union) is, has been at all times material, a labor organization within the meaning of Section 2(5) of the Act, and represents the following bargaining units, appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV.

The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (aka "performer"), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

3. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with information requested since December 18, 2018, which was necessary and relevant to the Union's performance of its duties as the collective-bargaining representative of the unit employees, or to bargain in good faith with the Union in an attempt to reach an accommodation of interests in response to the Union's request for relevant information that Respondent considers confidential.

4. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the information requested, and thereby engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.¹³ Respondent is ordered to provide the following information to the Union:

1. A list of specific contracts, with broadcast call letters, union name and local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Respondent for dues checkoff practice.
2. The actual cost to Respondent for the dues checkoff practice at each of the aforementioned broadcast stations, spelling out the costs and stations.
3. The actual current cost to Respondent for dues checkoff processing at Respondent. Please itemize the costs.

On the basis of the foregoing findings of fact and conclusions of law, and the entire record, I issue the following recommended¹⁴

ORDER

Respondent, Nexstar Broadcasting, Inc., d/b/a KOIN-TV, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO with information requested since December 18, 2018, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees, or refusing to bargain in good faith with the Union in an attempt to reach an

¹³ Charging Party requests numerous additional remedies, including a reading of the notice, which I decline to recommend (CP Br. at 9–10). Such remedies are not appropriate or justified in this matter.

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

accommodation of interests in response to the Union's request for relevant information that Respondent considers confidential.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, in a timely manner, the information requested since December 18, 2018, or bargain in good faith with the Union to reach an accommodation of interests in response to the Union's request for relevant information that Respondent considers confidential, described as follows:

1. A list of specific contracts, with broadcast call letters, union name and local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Respondent for dues checkoff practice.
2. The actual cost to Respondent for the dues checkoff practice at each of the aforementioned broadcast stations, spelling out the costs and stations.
3. The actual current cost to Respondent for dues checkoff processing at Respondent. Please itemize the costs.

(b) Within 14 days after service by the Region, post at its facility in Portland, Oregon, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since December 18, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. August 27, 2020

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

¹⁵ If the facility is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the

NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO (the Union) with information requested since December 18, 2018, which is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our employees in the following bargaining units:

The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals, guards, and supervisors as defined in the Act, and all other employees of KOIN-TV.

The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (aka "performer"), office clericals, professionals, guards, and supervisors as defined in the Act and all other employees of KOIN-TV.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the national Labor Relations Act.

WE WILL, in a timely manner, furnish the Union with the information requested since December 18, 2018, or will bargain in good faith with the Union to reach an accommodation of interests in response to the Union's request for the following relevant information that Respondent considers confidential:

1. A list of specific contracts, with broadcast call letters, union name and local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Respondent for dues checkoff practice.

notice if Respondent customarily communicates with its employees by electronic means. *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68, slip op. 4 (2020).

If this Order is enforced by a judgment of a United States court of appeals, the words in each of the notices referenced herein reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

2. The actual cost to Respondent for the dues checkoff practice at each of the aforementioned broadcast stations, spelling out the costs and stations.
3. The actual current cost to Respondent for dues checkoff processing at Respondent. Please itemize the costs.

WE WILL bargain in good faith with the Union and timely provide it with information that is relevant and necessary to its role as your bargaining representative.

NEXSTAR BROADCASTING INC., D/B/A KOIN-TV

The Administrative Law Judge's decision can be found at www.nlr.gov/case/19-CA-240187 or by using the QR code below. Alternatively, you can obtain a copy of the decision from

the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

